IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-609.

TERMINAL FREIGHT HANDLING CO. AND TERMINAL FREIGHT COOPERATIVE ASSOCIATION,

Petitioners,

vs.

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

Respondent.

BRIEF AMICUS CURIAE ON BEHALF OF THE PHILLIPS PLUMBING AND HEATING COMPANY IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.*

*Pursuant to Rule 42(1) of the Rules of this Court, oral consent has been received from all parties hereto to the filing of this brief *amicus curiae* and written consents are being lodged with the Clerk of the Court.

I.

INTEREST OF THE AMICUS CURIAE.

This brief is filed on behalf of Phillips Plumbing and Heating Company ("Phillips"), a small employer located in Davenport, Iowa. Phillips was recently subjected to a devastating secondary boycott and, as a result, filed unfair labor practice charges with the National Labor Relations Board in order to seek the protection afforded by Section 10(l) of the National Labor Relations Act.[1]

As in the instant case, the Regional Director of the Board found that there was reasonable cause to believe that Phillips' charges were true. Nevertheless, Phillips, like Terminal and Sears in the present case, was not afforded the relief contemplated by Section 10(l). In addition, the Board negotiated a settlement agreement without the charging party's participation. The secondary boycott was continued at Phillips and no injunctive relief was sought. Phillips, as a result, lost valuable contracts in business which it may never be possible to recoup.

Counsel for Phillips is a large national law firm located in Chicago, Illinois representing many employers, both small and large, throughout the United States. The above experience of Phillips, in Counsel's experience, is by no means unique. Rather, it is part of a pervasive practice followed uniformly by the Board. Those cases in which

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1. *Local Union No. 562, Affiliated with the U. A. of Journeyman & Apprentices of the U. S. & Canada, AFL-CIO (George Koch Sons, Inc.)*, N. L. R. B. Case No. 17-CC-467.

the Board fails to carry out the statutory command are the rule rather than the exception in Section 10(1) proceedings.[2]

II.

REASONS FOR GRANTING THE WRIT OF CERTIORARI.

A. The Problems Raised in the Administration of Section 10(1) of the Act Are Exemplified by This Case, and Should Be Ruled Upon by This Court to Effectuate the Purposes of the Act.

As noted above, the experience of Terminal and Sears here is typical of a recurrent pattern utilized by the Board in its administration of the Act. The resultant harm experienced by employers, whose only effective protection from secondary boycotts is Section 10(1),[3] is widespread and substantial. Since most charging parties are small employers who can afford neither prolonged picketing or expensive litigation,[4] this case is an appropriate vehicle for this Court to now resolve the present controversy.

2. As the Court below found, Board Regional Directors seek 10(1) injunctive relief in only *one-quarter* of all cases where there has been a finding of reasonable cause to believe there has been a secondary boycott. App. to Pet. for Cert., p. 8, n. 9.

3. That a Section 10(1) injunction is the only effective remedy is adequately demonstrated by the substantial delays experienced when alternative routes are followed. An employer who is experiencing secondary pressures cannot withstand those pressures through the lengthy ordeal of investigation of the charge and issuance of a complaint, of the hearing before the Trial Examiner and a ruling upon his decision by the Board; and of finally enforcing the Board's order in a court of appeals. Through participation in the Board's procedures, Phillips and others have realized not only the costly delays but also their paralyzing economic effect upon the employer.

4. For example, more than 50% of the charges involving Section 10(1) that were filed in 1969 were filed by employers with less than 30 employees. *33rd Annual Report of the National Labor Relations Board (1968)*, Table 18, pp. 238-239.

B. The Present Case Arises in the Contexts of Other Significant Issues Which This Court Should Also Consider.

The present case is being submitted to the Court as part of a multi-faceted dispute raising numerous significant questions affecting the rights of charging parties generally. These questions are also recurrent and, for the reasons previously discussed, likely to continue to escape review by this Court. Phillips therefore concurs with the position of Terminal that the present case should be considered in conjunction with these related matters. Petitions for certiorari in these cases have recently been filed with this Court,[5] and to underscore the overall importance of this case, identical versions of the present brief are also being filed therein.

CONCLUSION.

For the aforegoing reasons, Phillips requests this Court to grant the instant petition for certiorari.

Respectfully submitted,

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5. *Sears, Roebuck and Co.* v. *Solien*, No. .....; and *Terminal Freight Cooperative Association* v. *Solien*, No. .....